



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

JUN 01 2017

CERTIFIED MAIL 7016 1970 0000 8992 6656  
RETURN RECEIPT REQUESTED

Mr. Timothy Aultman  
Manager  
Compliance & Enforcement Division  
Office of Pollution Control  
Mississippi Department of Environmental Quality  
P.O. Box 2261  
Jackson, Mississippi 39222

Re: Administrative Compliance Order on Consent, Docket No.: CWA-04-2017-4764  
D.B.C. Corporation

Dear Mr. Aultman:

Pursuant to Sections 308 and 309(a) of the Clean Water Act (CWA), 33 U.S.C. §§ 1318 and 1319(a), I have determined that the above-referenced industrial facility is in violation of Section 301 of the CWA, 33 U.S.C. § 1311. As a result, I have executed an Administrative Order on Consent (AOC), a copy of which is enclosed for your reference. The AOC is presently being served.

Sincerely,

A handwritten signature in blue ink, appearing to read "MSW", is written over a circular official stamp.

Mary S. Walker  
Director  
Water Protection Division

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

JUN 01 2017

CERTIFIED MAIL 7016 1970 0000 8992 6663  
RETURN RECEIPT REQUESTED

D.B.C. Corporation  
c/o Mr. Herwig DeBeukelaer  
Plant Manager  
228 Industrial Drive North  
Madison, Mississippi 39110

Re: Administrative Compliance Order on Consent No.: CWA-04-2017-4764  
D.B.C. Corporation

Dear Mr. DeBeukelaer:

Enclosed, is an executed copy of the Administrative Order on Consent (AOC), Docket No.: CWA-04-2017-4764, pertaining to the above referenced industrial facility. Please take note of Paragraphs 18-21 of the AOC, which require certain actions and submittals from D.B.C. Corporation.

The EPA appreciates your cooperation in this matter. If you have any questions concerning the enclosed AOC, please contact Ms. Becky Garnett of my staff at (404) 562-8083 or via email at [garnett.becky@epa.gov](mailto:garnett.becky@epa.gov), or Mr. Nathan Stopper, Associate Regional Counsel, at (404) 562-9581 or via email at [stopper.nathan@epa.gov](mailto:stopper.nathan@epa.gov).

Sincerely,

A handwritten signature in blue ink that reads "Denise D. Diaz".

Denise D. Diaz, Chief  
NPDES Permitting and Enforcement Branch  
Water Protection Division

Enclosure

cc: Mr. Timothy Aultman  
Mississippi Department of Environmental Quality

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

<b>IN THE MATTER OF:</b>	) <b>ADMINISTRATIVE COMPLIANCE</b>
	) <b>ORDER ON CONSENT</b>
<b>D.B.C. CORPORATION</b>	)
<b>MADISON, MISSISSIPPI</b>	)
	)
<b>RESPONDENT.</b>	) <b>DOCKET NO. CWA-04-2017-4764</b>
	)
	)

---

**ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT**

**I. Statutory Authority**

1. Section 309(a) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a), provides that, whenever the U.S. Environmental Protection Agency (EPA) finds that any person is in violation of any condition or limitation which implements, *inter alia*, Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, the EPA may issue an order requiring such person to comply with such condition or limitation, and shall specify a time for compliance that the EPA determines to be reasonable.

2. The following Findings of Fact and Determinations of Law are made and this Administrative Compliance Order on Consent (AOC) is issued pursuant to the authority vested in the EPA by Section 309(a) of the CWA, 33 U.S.C. § 1319(a), as amended. This authority has been delegated to the Regional Administrator of the EPA, Region 4, and further delegated by the Regional Administrator to the Director of the Water Protection Division of the EPA, Region 4.

**II. Findings of Fact and Determinations of Law**

3. To accomplish the objective of the CWA, as stated in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), to restore and maintain the chemical, physical, and biological integrity of the nation's waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into navigable waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

4. D.B.C. Corporation is a privately owned corporation formed under the laws of the State of Mississippi and is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

5. At all times relevant to this action, the Respondent owned and/or operated a cookie production facility, as identified by Standard Industrial Classification (SIC) Code 2052,

2017 MAY 02 08:16 CWEB

located at 228 Industrial Drive North, Madison, Mississippi 39110, latitude 32.524482 north and longitude 90.091662 west (Facility).

6. Section 402 of the CWA, 33 U.S.C. § 1342, establishes a NPDES Permit Program and authorizes the EPA or authorized states to administer it, including the issuance of NPDES permits allowing for the discharge of pollutants, including stormwater, into navigable waters subject to specific terms and conditions. The EPA has granted the State of Mississippi, through the Mississippi Department of Environmental Quality (MDEQ), authorization to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. MDEQ issued the Baseline Storm Water General Permit for Industrial Activities, Permit No. MSR00, (Permit) in accordance with the provisions of the Mississippi Air and Water Pollution Control Law, Section 49-17-1 et seq., Mississippi Code of 1972, and the regulations and standards adopted and promulgated thereunder, and under authority granted to it pursuant to Section 402(b) of the CWA. The Permit became effective on November 17, 2015, and will expire on October 31, 2020. The Permit was preceded by a prior Baseline Storm Water General Permit for Industrial Activities issued in accordance with the same provisions as the current Permit. Coverage under the Permit is obtained, and was obtainable for the preceding permit, by submitting a Baseline Notice of Intent (BNOI) to MDEQ.

8. The Permit is a Mississippi statewide NPDES general permit governing stormwater point source discharges associated with industrial activity. Under the Permit, discharges associated with industrial activities listed in 40 C.F.R. 122.26(b)(14)(i-ix), (xi), including food and kindred products, require NPDES stormwater discharge permits if material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to stormwater. *See* Permit, ACT1, T-1. Industrial operators claiming “no exposure” are required to submit written certification. *See id.*, ACT2, T-6. Stormwater discharges that enter state waters or stormwater conveyance systems leading to state waters are subject to regulation and compliance with the conditions set forth in the Permit.

9. Pursuant to Section 402(p)(2)(B) of the CWA, 33 U.S.C. § 1342(p)(2)(B), a NPDES permit is required for “a [stormwater] discharge associated with industrial activity.”

10. “Stormwater discharge associated with industrial activity,” as defined at 40 C.F.R. § 122.26(b)(14), means “the discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant.”

11. Pursuant to 40 C.F.R. § 122.26(b)(14)(xi), facilities involved in food and kindred products, including those classified with SIC Codes beginning with 20, such as SIC Code 2052, are considered to be engaging in “industrial activity” for purposes of 40 C.F.R. 122.26(b)(14).

12. On November 7, 2016, representatives of the EPA, in conjunction with MDEQ, performed a Compliance Stormwater Evaluation Inspection (CSWEI) at the Facility to evaluate

the Respondent's compliance with the requirements of Section 301 of the CWA, 33 U.S.C. § 1311, the regulations promulgated thereunder at 40 C.F.R. § 122.26, and the Permit.

13. On February 2, 2017, the EPA issued an Inspection Report to the Respondent.
14. During the CSWEI, the EPA inspectors observed, among other things, the following:
  - A. The Facility had outdoor industrial processes creating potential exposure and contribution to stormwater contamination, including but not limited to: (a) waste material disposal and storage, including a used coconut oil spill area, scrap materials stored in the southeast corner of the parking lot, and an open-top dumpster; and (b) a leaking oil/water separator near the Facility's compressor area.
  - B. The Facility is a cookie production facility (SIC Code 2052), but has not submitted a BNOI for coverage under the existing Permit nor obtained a No Exposure Certification.

15. In accordance with Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and its implementing regulations, based on the CSWEI and due to the hydrology of the Facility and historic rainfall data, the EPA has determined that for at least the past 13 years, stormwater associated with industrial activity generally discharged from the Facility through a concrete stormwater ditch located on the north side of the building, to the city of Canton Municipal Separate Storm Sewer System (MS4), and ultimately to Bear Creek.

16. Bear Creek is a tributary of the Big Black River, a traditionally navigable water of the United States as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and its implementing regulation 40 C.F.R. § 122.2.

17. Therefore, the Respondent has violated Section 301 of the CWA, 33 U.S.C. § 1311, by discharging stormwater without proper authorization to waters of the United States.

### **III. Agreement on Consent**

18. Based on the foregoing Findings of Fact and Determinations of Law and pursuant to the authority of Sections 308 and 309(a) of the CWA, 33 U.S.C. §§ 1318 and 1319(a), THE DIRECTOR HEREBY ORDERS AND THE RESPONDENT HEREBY AGREES AND CONSENTS TO THE PROVISIONS OF THE PARAGRAPHS BELOW:

- A. The Respondent shall cease all unauthorized discharges of stormwater from industrial activity from the Facility to waters of the United States without a NPDES permit within ninety (90) days of the Effective Date of this AOC.

- B. If the Respondent chooses to comply by ceasing all discharges, the Respondent shall:
  - a. Submit, within thirty (30) days of the Effective Date of this AOC, a No Exposure Certification (NEC) to MDEQ after all conditions of no exposure for industrial activities, products, materials, and equipment are obtained, and simultaneously submit a copy of the NEC and proof of submission to the EPA.
  - b. Submit to the EPA confirmation that the NEC submitted for the Facility was deemed acceptable to MDEQ within ninety (90) days of the Effective Date of this AOC.
- C. If the Respondent intends to comply by obtaining a NPDES permit that authorizes discharges from the Facility, the Respondent shall:
  - a. Report to the EPA on the submission of a BNOI and associated documents to MDEQ within thirty (30) days of the Effective Date of this AOC, and simultaneously submit a copy of the BNOI and proof of submission to the EPA.
  - b. Submit a copy of the Facility's revised Stormwater Pollution Prevention Plan (SWPPP) to the EPA within thirty (30) days of the Effective Date of this AOC.
  - c. Submit to the EPA confirmation that the BNOI submitted for the Facility was deemed acceptable to MDEQ within ninety (90) days of the Effective Date of this AOC.

19. The Respondent may submit a request, in writing, for an extension of time to comply with the requirements of this AOC within seven (7) days of the required completion date. Such request must include the reason(s) for the extension request and a date when compliance will be achieved. Any extension must be granted by the EPA in writing to be effective.

20. All reports, notifications, documentation, and submittals required by this AOC shall be signed by a duly authorized representative of the Respondent as specified by 40 C.F.R. § 122.22 and shall include the following statement:

"I certify under the penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete.

I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

21. All reports, notifications, documentation, and submittals required by this AOC shall be sent by certified mail or its equivalent to the following addresses:

Rebecca Garnett  
NPDES Permitting and Enforcement Branch  
Water Protection Division  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W. – 9T25  
Atlanta, Georgia 30303-8960

and

Timothy Aultman, Manager  
Compliance & Enforcement Division  
Office of Pollution Control  
Mississippi Department of Environmental Quality  
PO Box 2261  
Jackson, Mississippi 39225

#### **IV. Final Report and Termination of AOC**

22. Within thirty (30) days after the Respondent has fully completed and implemented the actions required by Section III (Agreement on Consent) of this AOC, the Respondent shall submit for the EPA's review and approval a final report (Final Report) that includes: (a) a description of all of the actions which have been taken toward achieving compliance with this AOC; (b) an assessment of the effectiveness of such actions; and (c) an analysis of whether additional actions beyond the scope of this AOC are necessary to further comply with the CWA, this AOC, and the Permit.

23. If the EPA determines, after review of the Final Report, that all the requirements of this AOC have been completed and implemented in accordance with this AOC, the EPA will provide notice to the Respondent and this AOC shall be deemed terminated.

24. If the EPA determines that any requirement has not been completed and implemented in accordance with this AOC, the EPA will notify the Respondent, provide a list of deficiencies, and may require the Respondent to modify its actions as appropriate within thirty (30) days in order to correct such deficiencies. If so required, the Respondent shall implement the modified and approved requirement(s) and submit a modified Final Report in accordance with the EPA notice. Failure by the Respondent to implement any of the approved modified requirement(s) shall be a violation of this AOC.

## **V. General Provisions**

25. The Respondent's compliance with this AOC does not necessarily constitute compliance with the provisions of the CWA, 33 U.S.C. § 1251 et seq., its implementing regulations, or with the Permit. The Respondent shall remain solely responsible for compliance with the terms of the CWA, its implementing regulations, this AOC, and the Permit.

26. Nothing in this AOC shall constitute a waiver, suspension, or modification of the terms and conditions of the Permit, which remain in full force and effect.

27. Failure to comply with the requirements herein shall constitute a violation of this AOC and the CWA, and may subject the Respondent to penalties as provided in Section 309(d) of the CWA, 33 U.S.C. § 1319(d).

28. This AOC shall not relieve the Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any other federal, state, or local permit. Compliance with this AOC shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by the EPA.

29. Issuance of this AOC shall not be deemed as prohibiting, altering, or in any way limiting the ability of the EPA to pursue any other enforcement actions available to it under law. Such actions may include, without limitation, any administrative, civil, or criminal action to seek penalties, fines, injunctive, or other appropriate relief, or to initiate an action for imminent and substantial endangerment under the CWA or any other federal or state statute, regulation, or permit.

30. The EPA reserves all rights and remedies, legal and equitable, available to enforce any violation cited in this AOC and to enforce this AOC.

31. Nothing in this AOC is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent, or other liability resulting from violations that were not alleged in this AOC.

32. This AOC applies to and is binding upon the Respondent and its officers, directors, employees, agents, successors, and assigns.

33. Any change in the legal status of the Respondent, including but not limited to any transfer of assets of real or personal property, shall not alter the Respondent's responsibilities under this AOC.

34. The Respondent admits to the jurisdictional allegations set forth within this AOC.

35. The Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondent may have with



respect to any issue of fact or law set forth in this AOC, including, but not limited to any right of judicial review of this AOC under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

36. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this AOC.

37. Pursuant to Section 309(a)(4) of the CWA, 33 U.S.C. § 1319(a)(4), the EPA has sent a copy of this AOC to the State of Mississippi.

38. Each undersigned representative of the parties to this AOC certifies that he or she is fully authorized to enter into the terms and conditions of this AOC and to execute and legally bind that party to it.

#### **VI. Effective Date**

39. This AOC shall become effective upon receipt by the Respondent of a copy of the fully executed AOC.

**IT IS SO AGREED,**

**BY D.B.C. CORPORATION:**

  
\_\_\_\_\_  
Herwig DeBeukelaer  
Plant Manager

Date: 4/26/2017

**BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4:**

  
\_\_\_\_\_  
Mary S. Walker  
Director  
Water Protection Division

Date: 5/26/2017